REMARKS

Amendments

Claims 5 and 14 are amended to insert therein the recitations from claims 7 and 15, respectively, which are canceled as now moot. Accordingly, claims 8 and 16 are amended to be dependent from claims 5 and 14, respectively. No new matter is entered by these amendments.

Election/Restriction

The Examiner has required restriction, under 35 USC §121, to one of the following inventions:

I. Claims 5-12 and 24, drawn to a method of secreting a heterologous polypeptide in a cell comprising using a translational initiation region variant, where the variant has a translational strength less than the wild-type translational initiation region.

II. Claim 13, drawn to a nucleic acid encoding a translational initiation strength variant.

III. Claims 14-23, drawn to a nucleic acid encoding a polypeptide linked to a translational initiation strength variant.

The Examiner states that the inventions of Groups I and Groups II and III are related as product and process of use, and in the instant case any of the claimed nucleic acids of Groups II and III may be used in methods of nucleic acid amplification or as probes for methods of hybridization. Also, the Examiner states that Groups II and III are unrelated because the different nucleic acids of these groups are physically, chemically, and patentably distinct nucleic acids that are unrelated biochemical structures each capable of supporting their own patents.

Applicants hereby elect Group I, with traverse. The USPTO already made the determination in the prior application closely related to this application, issued as U.S. Pat. No. 5,840,523, that all groups of this restriction requirement may be examined in one case. In fact, instant claims 5-24 reflect claims 1-6 and 8-21 of U.S. Pat. No. 5,840,523, except that independent claims 5 and 14 do not contain the language "wherein the amino acid sequence of said translational initiation region variant is not altered," and independent claims 13 and 24 incorporate the Markush language of claim 13 of the '523 patent into claims 10 and 21 thereof, respectively. There would be no additional burden to search these groups together since they were

essentially already searched together by the previous Examiner in U.S. Pat. No. 5,840,523.

The Examiner also states that the application contains claims directed to the following patentably distinct species of the claimed invention: The method of Group I contains claims to patentably distinct species of signal sequences in claims 8-12 (of which claims 5 and 7 are generic); and the method of Group III contains claims to patentably distinct species of signal sequences of claims 16-20 (of which claims 14 and 15 are generic). Applicants are required to elect a single disclosed species.

Applicants hereby elect from among these species the signal sequence LamB, which can be comprised within the method of claims 5, 6, 8, 9, 11, and 24 (hence, claims 5, 6, 8, 9, 11, and 24 are readable thereon), and which can be comprised within claims 14, 16, 17, 19, and 21-23 (hence, claims 14, 16, 17, 19, and 21-23 are readable thereon). Applicants note for the record that claims 13 and 24 contain the same Markush group as claims 8 and 16. For purposes of these claims, the LamB signal sequence is elected and claim 13 is readable thereon, as is claim 24.

Following election, the claims readable on this signal sequence, including the Markush-type claims, will be examined fully with respect to the elected species and further to the extent necessary to determine patentability. Should no prior art be found that anticipates or renders obvious the elected species, the search of the claims will be extended to the extent necessary to determine patentability of all such claims.

If the Examiner has any questions regarding this response, he is invited to call the undersigned attorney at the number indicated below.

Respectfully submitted,

GENENTECH, INC.

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By: Janet E. Hasak

Janet E. Hasak
Reg. No. 28,616
Telephone No. (650) 225-1896